MONTANA LEGISLATIVE HISTORY

Chapter 428 19 99

Bill H 180 S _____ Original bill & history ___C

H. Committee on Judiciary ✓		S. Committee on Judiciary ✓	
Hearing Date(s) 1-12	✓ C	Hearing Date(s) 3-5	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

1/04	Referred to Taxation		
2/12	Hearing		
3/31	Missed Deadline for Revenue Bill Transmittal		
4/07	Tabled in Committee		
	Died in Standing Committee		

HB 179 Introduced by Sliter *LC0344 Drafter: Maly*

Revise Certain Labor Laws Pertaining to Unemployment Benefits;...

By Request of Department of Labor and Industry

12/24	Introduced		
1/04	1st Reading		
1/04	Referred to Business and Labor		
1/04	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/11	Fiscal Note Signed		
1/12	Fiscal Note Printed		
1/12	Hearing		
1/12	Committee Executive Action--Bill Passed as Amended	15	3
1/13	Committee Report--Bill Passed as Amended		
1/15	2nd Reading Passed	76	23
1/16	3rd Reading Passed	77	22
	Transmitted to Senate		
1/27	Referred to Labor and Employment Relations		
2/11	Hearing		
2/12	Committee Executive Action--Bill Concurred	7	2
2/12	Committee Report--Bill Concurred		
3/02	2nd Reading Concurred	48	0
3/03	3rd Reading Concurred	48	2
	Returned to House		
3/03	Sent to Enrolling		
3/04	Returned from Enrolling		
3/06	Signed by Speaker		
3/09	Signed by President		
3/10	Transmitted to Governor		
3/15	Signed by Governor		
3/16	Chapter Number Assigned		
	Chapter Number 61		
	Effective Date: 7/01/1999 - All Sections		

HB 180 Introduced by Soft, et al. *LC0208 Drafter: Niss*

Allow the Department of Public Health and Human Services or a Guardian Ad Litem to Petition for Appointment of a Guardian for a Child Found to Be a Youth in Need of Care Either as Part or Not as Part of a Termination of Parental Rights;...

By Request of Department of Public Health and Human Services

12/24	Introduced
1/04	1st Reading
1/04	Referred to Judiciary
1/04	Fiscal Note Requested
1/11	Fiscal Note Received
1/11	Fiscal Note Signed

1/12	Fiscal Note Printed		
1/12	Hearing		
1/15	Committee Executive Action--Bill Passed as Amended	15	5
1/16	Committee Report--Bill Passed as Amended		
1/19	2nd Reading Passed as Amended	92	7
1/22	Revised Fiscal Note Requested		
1/22	3rd Reading Passed	94	6
	Transmitted to Senate		
1/27	Referred to Judiciary		
1/28	Revised Fiscal Note Received		
1/29	Revised Fiscal Note Signed		
1/29	Revised Fiscal Note Printed		
3/05	Hearing		
3/18	Committee Executive Action--Bill Concurred as Amended	9	0
3/18	Committee Report--Bill Concurred as Amended		
3/19	2nd Reading Concurred	44	0
3/22	Rereferred to Finance and Claims		
3/30	Hearing		
3/30	Committee Executive Action--Bill Concurred	18	0
3/30	Committee Report--Bill Concurred		
4/06	2nd Reading Concurred	50	0
4/07	3rd Reading Concurred	49	0
	Returned to House with Amendments		
4/13	2nd Reading Senate Amendments Concurred	63	36
4/14	3rd Reading Passed as Amended by Senate	79	20
4/14	Sent to Enrolling		
4/15	Returned from Enrolling		
4/16	Signed by Speaker		
4/16	Signed by President		
4/16	Transmitted to Governor		
4/22	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 428		
	Effective Date: 10/01/1999 - All Sections		

HB 181 Introduced by Sliter *LC0357 Drafter: Maly*

Require Insurers to Obtain a Consumer's Consent to the Use of Motor Vehicle Repair Parts That Are Not Made by the Manufacturer;...

By Request of State Auditor

12/24	Introduced		
1/04	1st Reading		
1/04	Referred to Business and Labor		
1/20	Hearing		
1/28	Tabled in Committee		
2/18	Committee Executive Action--Bill Passed as Amended	12	6
2/18	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed	83	16
2/22	3rd Reading Passed	78	21
	Transmitted to Senate		
2/23	Referred to Business and Industry		
3/08	Rereferred to Rules		

HB 176 SPONSOR: Bergsagel, Ernest SHORT TITLE: Revise the disposition of youth court records
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 01/04/1999 HEARD ON: 01/13/1999
EXECUTIVE ACTION: 01/18/1999 Bill Passed -- VOTE: 18 - 0
FINAL DISPOSITION 03/19/1999 Chapter Number Assigned

HB 180 SPONSOR: Soft, Loren SHORT TITLE: Guardianship petition for youth in need of care
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/15/1999 Bill Passed as Amended -- VOTE: 15 - 5
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 203 SPONSOR: Shockley, Jim SHORT TITLE: Revise criminal laws
REFERRED ON: 01/05/1999 HEARD ON: 01/15/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 15 - 3
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 209 SPONSOR: Shockley, Jim SHORT TITLE: Provide plea of nolo contendere in criminal matters
REFERRED ON: 01/05/1999 HEARD ON: 01/15/1999
EXECUTIVE ACTION: 01/25/1999 Bill Passed as Amended -- VOTE: 16 - 4
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 213 SPONSOR: McGee, Dan SHORT TITLE: Earned incentive time on parole supervision
REFERRED ON: 01/06/1999 HEARD ON: 01/18/1999
TABLED ON: 01/19/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

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HB 214 SPONSOR: McGee, Dan SHORT TITLE: Clarify statute of limitations on surveying of real property
REFERRED ON: 01/06/1999 HEARD ON: 01/19/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed -- VOTE: 18 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C CLARK**, on January 12, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: Rep. Sam Kitzenberg (R)

Staff Present: John MacMaster, Legislative Services Division
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/12/99HB 104,HB 115,HB116,HB180
Date Posted: 1/6/99
Executive Action: none taken

Candace Payne, Rimrock Foundation
{Tape : 2; Side : B; Approx. Time Counter : 200 - 245}
EXHIBIT(juh08a0
9)
Mona Jamison, Montana Addiction Service Providers
{Tape : 2; Side : B; Approx. Time Counter : 245 - 306}
Senator Christaiens, Senator from Great Falls, Montana
{Tape : 2; Side : B; Approx. Time Counter : 306 - 373}

Opponents:
None

Informational Testimony:
None

Questions from Committee Members and Responses:
{Tape : 2; Side : B; Approx. Time Counter : 373 - 500}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 88}

Closing by Sponsor:

Rep. McGee made closing remarks.
{Tape : 3; Side : A; Approx. Time Counter : 88 - 107}

HEARING ON HB 180

Sponsor:

Rep. Soft made opening statements HB 180.
{Tape : 3; Side : A; Approx. Time Counter : 107 - 238}

Proponents:

Chuck Hunter, Montana Dept. of Public Health and Human Services
{Tape : 3; Side : A; Approx. Time Counter : 238 - 435}
EXHIBIT(juh08a1
1)
EXHIBIT(juh08a1
2)
EXHIBIT(juh08a1
3)
EXHIBIT(juh08a1
4)
EXHIBIT(juh08a1
7)

(this exhibit was handed in out of order)

Fred Fiske, self
{Tape : 3; Side : A; Approx. Time Counter : 435 - 550}
Stan Spottedwolf, Blackfoot Family Services
{Tape : 3; Side : B; Approx. Time Counter : 0 - 63}
Carly Waterman, self
{Tape : 3; Side : B; Approx. Time Counter : 63 - 98}
Laurie Koutnik, Christian Coalition of Montana

EXHIBIT(15)

{Tape : 3; Side : B; Approx. Time Counter : 98 - 136}
John Wilkinson, Intermountain Children's Home
{Tape : 3; Side : B; Approx. Time Counter : 136 - 228}
Sherry Meador, Supreme Court Assessment Program
{Tape : 3; Side : B; Approx. Time Counter : 228 - 241}
Sandy Oitzinger, Montana Juvenile Probations Officers Association
{Tape : 3; Side : B; Approx. Time Counter : 241 - 251}
Ardis Kay Loberg, Montana State Foster Adoptive Parents Association
{Tape : 3; Side : B; Approx. Time Counter : 251 - 269}

Opponents:
None

Informational Testimony:
None

Questions from Committee Members and Responses:
{Tape : 3; Side : B; Approx. Time Counter : 269 - 550}
{Tape : 4; Side : A; Approx. Time Counter : 0 - 96}

Closing by Sponsor:

Rep. Soft made closing remarks.

EXHIBIT(16)

{Tape : 4; Side : A; Approx. Time Counter : 96 - 197}

Chairman Clark gave information to committee members regarding security measures and emergency measures to be taken when necessary.
{Tape : 4; Side : A; Approx. Time Counter : 197 - 270}

Rep. Anderson moved to adjourn meeting; motion carried unanimously.

HB 149 SPONSOR: Davies, Bob SHORT TITLE: Revise authority for administrative regulation of firearms
REFERRED ON: 02/02/1999 HEARD ON: 03/10/1999
TABLED ON: 03/16/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 176 SPONSOR: Bergsagel, Ernest SHORT TITLE: Revise the disposition of youth court records
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 01/27/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/04/1999 Bill Concurred -- VOTE: 7 - 0
FINAL DISPOSITION 03/19/1999 Chapter Number Assigned

HB 180 SPONSOR: Soft, Loren SHORT TITLE: Guardianship petition for youth in need of care
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 01/27/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/18/1999 Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 185 SPONSOR: Menahan, Red SHORT TITLE: Provide for a detention center inspection program
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 03/06/1999 HEARD ON: 03/25/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 6 - 1
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 197 SPONSOR: Cobb, John SHORT TITLE: Rule making notes for bills
REFERRED ON: 02/16/1999 HEARD ON: 03/10/1999
TABLED ON: 03/27/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 203 SPONSOR: Shockley, Jim SHORT TITLE: Revise criminal laws
REFERRED ON: 01/30/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/24/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN AL BISHOP**, on March 5, 1999 at 9:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Lorents Grosfield, Chairman (R)
Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 65, HB 180, HB 81

Executive Action: none

HEARING ON HB 65

Sponsor: **REP. CHRIS AHNER, HD 51, Helena**

Proponents: **John W. Larson, District Judge, Missoula and Mineral County**
Mike Ferriter, Department of Corrections

Program. **Mr. Ferriter** indicated that the contract is specific for one-hundred eight offenders. However, if a youth court chooses to spend there own money that comes from a pilot district, then that would come outside of the contract. The Aspen corporation would more than likely be willing to expand. **SEN. BARTLETT** requested that Mr. Feriter talk to Judge Larson and try to work an agreement out regarding the amendment.
{Tape : 1; Side : A; Approx. Time Counter : 17.6 - 20.2}

Sen. Jabs asked Mr. Ferriter if Judge Larson said that the County pays for placement out of their pocket. **Mr. Ferriter** noted that if Judge Larson said "County" that in a sense that means "State money that in apportioned out to the County" unless the they he has a special fund set up. Judge Larson said that in the pilot program, Aspen placements don't come out of this foster care budget. Under consent decrees, the use of County allocations of state moneys would be appropriate. He also accesses Federal grants for the use of Aspen.
{Tape : 1; Side : A; Approx. Time Counter : 20.2 - 23.1}

Closing by Sponsor:

REP. CHRIS AHNER closed on her bill. With this program, she really appreciates the flexibility that it gives the Counties to utilize a program that might be specific to their needs.
{Tape : 1; Side : A; Approx. Time Counter : 23.1 - 23.8}

HEARING ON HB 180

Sponsor: REP. LOREN SOFT, HD 12, N.E. Billings

Proponents:
John W. Larson, District Judge
Roberta Wilkenson, Citizen
Leah LaMere, Chippewa Cree Tribe
Harriet Standing Rock, Chippewa Cree Tribe, Rocky Boy
Martin Bennett, Citizen
Colleen Murphy, MT Chapter of National Association of Social Workers
Dan McGee, HD 21
Ann Gilkey, Supreme Court Assessment Program
Laurie Koutnik, Christian Coalition of Montana
Chuck Hunter, Child and Family Services Division of the Department of Public Health and Human Services

Opponents: **Dennis Paxinos, Yellowstone County Attorney**
Mike McGrath, County Attorney Association
Marty Lambert, Gallatin County Attorney

Opening Statement by Sponsor:

REP. LOREN SOFT opened on his bill. This bill addresses subsidized guardianship programs for kids who are languishing in our foster care system. Nearly three thousand kids in Montana remain in various temporary living arrangements. This bill brings another option to bring permanency, belonging and stability to children that are caught up in the foster care drift.

Increasing permanency placement options to children in Montana is a goal of this bill. Providing an alternative for children for whom there is no compelling reason to terminate parental rights, yet cannot live at home, is an objective. Another goal is to require the Department to make concerted efforts at reunification. Continuing the work began by the Kellogg foundation is an objective of the bill. Another intention is to make placement decisions viewed through the eyes of the child, and doing so in a timely manner.

Another aim is to further the efforts of the 1997 Legislature that adopted the policy that children should be in foster care for a limited time. Another goal is to comply with the Adoption and Safe Families Act. The next objective would be to place children in permanent placements who cannot be reunited with their parents and/or their parental rights cannot be terminated. Another goal is to place children who may be difficult to adopt due to age or interfering parental rights. We also need to address the cultural differences with the Native American population. Another objective of the bill is to assure that the child being considered for placement has been with a relative or other placement in which the potential guardian is committed to providing a long term relationship with the child.
{Tape : 1; Side : A; Approx. Time Counter : 24.4 - 30.8}

Proponents' Testimony:

Chuck Hunter, DPHHS, rose in support of the bill. His Division is in charge of administering the programs for abuse and neglect in Montana. The results from the permanency placement efforts over the past few years have been good. The number of adoptions in the state have gone up at a growth rate of about 27 percent. Subsidized adoptions have gone up at a rate of 40 percent. The Division expects to increase the adoptions by ten to twelve percent in each year of the upcoming biennium. In a system that

wants permanency, but does not provide options for placement, that presents a problem. This bill speaks to that. This provides a permanent setting in a guardianship, and requires the following.

Number one, the child would have to be in the system and have been adjudicated as in need of care. Two, we make reasonable efforts to reunify the child in the home. Third, the Child is at least twelve years old. Fourth, the child has lived with the potential guardian for at least twelve months and that the guardian is committed to long term placement for the child. Fifth, that it is in the child's best interest to be placed with the guardian. Sixth, that either termination of parental rights is not the child's best interest or that parental rights have been terminated but adoption is not in the interest of the child. Seventh, the child must have given written permission for the guardianship. Eighth, if the child is Native American, the child's tribe must be notified.

The Department must give consent to the guardianship after a subsidy is considered for the guardianship. A subsidized adoption statute has been in place since 1977 that encourages families to put children into adoption but provides a subsidy for those parents who need that money in order to make that adoption work financially. This statute would be set up similarly, allowing the state to pay a subsidy to those families who take these children under a permanent guardianship arrangement. Currently all the children that we are trying to gain permanency for are in foster care. The permanency subsidy is ten dollars less than the foster care rates.

If this bill moves forward, the Department intends on placing about one-hundred children over the next two years. This bill will create a new option for permanent placement. It will move a lot of kids out of foster care sooner. It will provide subsidies for guardians, allowing children to stay in families that relationships have been formed. It will allow children who have formed bonds in foster care to continue to have those bonds. It will increase compliance with the Indian Child Welfare act. It will save the state money. There has been some discussion on the Constitutionality of the right to a jury trial amendment proposed. Mr. Hunter recommended a Do Pass on this bill in the form that it came out of the House. **EXHIBIT(2) EXHIBIT(3)** ***{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.8}***

Roberta Wilkinson rose in support of the bill as it is amended. She welcomed the idea of a jury trial, shifting the decision of removing children out of homes to a jury of ones peers. If the jury decided that a child needs to be removed that the child should not be removed until that decision is made, and then the

social worker may proceed. If removal is not warranted the child would remain in the home and the case would be dropped. This would free the social worker up to work on other cases. Expense on the family would be alleviated by having one jury trial as opposed to a succession of court hearings. It is in the best interest of the family and would put less stress on the children. This amendment allows more than just a social worker and a judge the ability to put their input into court hearings.
{Tape : 1; Side : B; Approx. Time Counter : 7.8 - 11.9}

Colleen Murphy rose in support of the bill in terms of subsidized guardianship. Permanency is a key element in a child's life because it helps children form attachments. Children without permanency lack attachment skills and become harder to place. In terms of the jury portion of the bill, Ms. Murphy stated that she is a little hesitant.
{Tape : 1; Side : B; Approx. Time Counter : 11.9 - 14.6}

DAN MCGEE, HD 21, rose in support of the bill. The right of trial by jury in this bill did not exist in its original draft. Our Constitution clearly states that we are entitled to a trial by jury. Legislation was trying to overturn what our Constitution allows for. When we deal with taking children from their homes, the parents deserve a right to include a jury in the trial. Rep. McGee encouraged the Committee to keep this language in the bill.
{Tape : 1; Side : B; Approx. Time Counter : 14.6 - 16.9}

REP. BOB LAWSON, HD 80, rose in support of the bill as amended. People in his district are frustrated by not having a voice when it comes to the removal or non-removal of children from their homes. The jury trial portion of the bill is a prime consideration and a necessity.
{Tape : 1; Side : B; Approx. Time Counter : 16.9 - 17.9}

REP. BRAD MOLNAR rose in support of the bill only as amended. The right to a jury trial is secured to all by the Constitution. There is no higher equity in the state of Montana other than a parent and a child. If a child is taken under this procedure, the adult is not charged with child abuse. By allowing a jury of peers to look at issues, they are allowed to discriminate between abuse and good parenting. This amendment should not be striped from the bill.
{Tape : 1; Side : B; Approx. Time Counter : 17.9 - 24.7}

Martin Bennett rose in support of the bill especially as amended. A jury trial diffuses hear-say and rumors. It is hard for one person to make a decision when it comes to something as important as children leaving or remaining in a home. The Judge can not

always make the proper decision because of the influence from family services.
{Tape : 1; Side : B; Approx. Time Counter : 24.7 - 26.6}

Harriet Standing Rock rose in support of the bill. Under this bill tribal children will be given a chance to retain their language and culture and most of all their religions and beliefs. This bill will support and foster our culture.
{Tape : 1; Side : B; Approx. Time Counter : 26.6 - 28.4}

Ann Gilkey rose in support of the bill. However, Ms. Gilkey is not in favor of the jury trial amendment. The amendment addresses a termination proceeding and the right to jury trial attaching at that point. The judge is in a very good position to assess the case because of the involvement that they have in the case from the beginning. House Bill 366 has new time lines imposed on the state and the courts in moving these cases through in a timely fashion. A jury trial requirement would make these time lines even more difficult to meet. All cases when a child is in foster care are reviewed by either a citizen review board or a foster care review board which are comprised of local community citizens.
{Tape : 1; Side : B; Approx. Time Counter : 28.4 - 31.2}

John Larson rose in support of the bill. One thing that may need to be taken into consideration is the importance of moving children into safe permanent homes. Therefore it may be proper to remove the twelve-year-old age requirement. In addition, everyone should be allowed to make the request to the court to have a guardianship. It should not rest entirely on the Department. A guardianship should be established on petition of any party. As far as requiring a child to give written consent, that is a difficult position to put a child in. This determination should be made in the court.
{Tape : 1; Side : B; Approx. Time Counter : 31.2 - 35.4}

Laurie Koutnik rose in support of the bill. As a foster parent in Montana, the need for adequate placement for youth is apparent. There is a scarcity of placement options for placement in Montana. Guardianships need to be added and this provision will allow youth to be placed in a loving and nurturing environment with individuals that may already be caring for them. Guardianships provide an option for placement and is a step in the right direction when aiming towards permanency planning for youth. **EXHIBIT(4)**
{Tape : 1; Side : B; Approx. Time Counter : 35.4 - 38.3}

<u>Opponents' Testimony</u>:

Dennis Paxinos rose in opposition of the bill as amended on the House Floor. The jury trial amendment was added to a benign bill. The amendment raises questions as to who gets to request the jury trial. Jurors are meant to be the finders of fact. This bill brings the jury in at the permanent custody hearing. Prior to that, the jurors are not aware of the situation. The courts will be occupied with jury selection and process, lessening the amount of cases able to be handled. If having a jury trial is important, it needs to be its own bill, and not tacked onto another bill.
{Tape : 1; Side : B; Approx. Time Counter : 38.3 - Tape : 2; Side : A; Approx. Time Counter : 2.0}

Mike McGrath rose in opposition of the bill as amended. Placements for young children who have been seriously abused and neglected is an excellent provision. If the amendment was stripped off of the bill, then the importance of this bill would be restored. The amendment is a borderline unconstitutional amendment, and stretches the title of the bill beyond what is permitted in the Constitution. The bill was introduced to deal with the appointments of guardians in permanent termination cases. The amendment talks to a separate issue entirely. This would impose a jury trial at the sentencing phase, after the facts have already been determined. If this amendment is left in, then the matter should be referred for a fiscal note.
{Tape : 2; Side : A; Approx. Time Counter : 2 - 6}

Marty Lambert rose in opposition of the bill especially as amended. Jury trials have no experience in dealing with these issues. This is a situation that needs to be dealt with by our elected judges. They are the people who have been involved in the case from the very beginning. We risk an uneven standard if these cases are submitted to juries.
{Tape : 2; Side : A; Approx. Time Counter : 6 - 10.1}

<u>Questions from Committee Members and Responses</u>:

SEN. HALLIGAN asked if there was testimony in the House on the DPHHS goals to try and establish the appointment of a guardian, the financial subsidy for guardianships, and the jury trial. **REP. SOFT** said that there was discussion on the appointment of guardians and the subsidy issues. However the amendment came up on the House floor. The intention of the bill originally did not include the jury trial concept. The jury trial amendment is not germane to the title of the bill. **SEN. HALLIGAN** asked if we have violated a fundamental rule of making sure that the title of a bill is clearly expressed so that the public knows what is being voted on. **REP. MOLNAR** said that as far as testimony goes, many amendments on the floor did not have testimony in Committee.

However in the original title, providing for revocation of guardianships is covered. The termination of the parent/child legal relationship is part of the revocation of a guardianship. This bill provides everything that the sponsor asked for. This bill does not reverse the original intent.
{Tape : 2; Side : A; Approx. Time Counter : 10.1 - 17.8}

SEN. BARTLETT asked REP. SOFT to respond to Judge Larson's proposed amendments, lifting the twelve-year-old requirement. **REP. SOFT** noted that the current waiver with the Federal government requires the child to be twelve years of age or over. **Chuck Hunter** responded to Judge Larson's proposed amendment that would allow any party petition the Department entering an order appointing a guardian. The way that the bill is drafted, in complying with the Federal waiver, the Department prefers to retain the ability to make a decision regarding a subsidy.

SEN. BARTLETT asked if written consent by the child is necessary. **Mr. Hunter** noted that the consent is required due to the Federal waiver.

SEN. BARTLETT asked if it could be made possible for parental rights not to be terminated in cases where that may not appear to be appropriate, and still provide long term care. **SEN. HALLIGAN** noted that it is important for a court to address that issue. **Judge Larson** said that the waiver only applies to subsidized guardianships. Guardianships should be able to be set up for all kids when it is in their best interest. The waiver may be able to be expanded if proven successful in other placements. **REP. SOFT** stated that this bill applies to children in subsidized guardianship roles. **Judge Larson** noted that a guardianship role without termination of parental rights is not possible.
{Tape : 2; Side : A; Approx. Time Counter : 17.8 - 27.5}

SEN. GRIMES asked Judge Larson a question regarding the written consent issue. If the written consent is left out of the bill, the concerns of the child, whether or not they have signed a consent form, will be taken into consideration. **Judge Larson** said that what he is asking is for the consent not to be a requirement. For instance, a disabled child simply can not sign.
{Tape : 2; Side : A; Approx. Time Counter : 27.5 - 29.4}

SEN. HALLIGAN said that in an abuse and neglect proceeding already established by a youth in need of care, then best interest standards can be taken under consideration, in order to establish some permanency. **Judge Larson** noted that there is a dependency link and a determination is made with all aspects taken under consideration. Terminating the parental rights first

may not be necessary and requiring so can make permanency for children harder to come by.
{Tape : 2; Side : A; Approx. Time Counter : 29.4 - Tape : 2; Side : B; Approx. Time Counter : 3.7}

Closing by Sponsor:

REP. SOFT closed on his bill. This bill has no intention of removing children from homes for financial benefits. Its intention is to find permanency for children caught in the foster care drift. Please look carefully at the amendment and the problems of the jury trial and consider removing it. The programs that are in place in the state are working. The guardianship will help with permanency planning. We have a responsibility to the orphans of the living to help them become mature and successful adults.
{Tape : 2; Side : B; Approx. Time Counter : 3.7 - 8.5}

HEARING ON HB 81

Sponsor: **REP. WILLIAM MENAHAN, HD 57, Butte**

Proponents: **Dennis Paxinos, Yellowstone County Attorney**
Mike McGrath, County Attorney Association

Opponents: **None**

Opening Statement by Sponsor:

SEN. HALLIGAN, HD 31, Missoula, opened for REP. MENAHAN'S bill.
{Tape : 2; Side : B; Approx. Time Counter : 8.5 - 9.6}

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, rose in support of the bill. The County Attorney's Association believed that there was a glitch in their statute when it came to dealing with youthful offenders. Every youthful offender must be sentenced to the Department of Corrections. The adult statute states that no offender can be sentenced to the Department for more than five years. A violent, youthful offender is going to receive a term much longer than five years. The legislature did not intend to make youthful offenders eligible for five years of punishment. This bill has the idea that an offender will still be sentenced to the Department of Correction with the exception that their sentence transferred into adult court that that term can be